

Common Errors

Do Not Overlook Coincidental Manufacture

The term manufacture also includes coincidental production of an EPCRA Section 313 chemical (e.g., as a byproduct or impurity) as a result of the manufacture, processing, otherwise use, or treatment of other chemical substances. In the case of coincidental production of an impurity (i.e., an EPCRA Section 313 chemical that remains in the product that is distributed in commerce), the *de minimis* exemption applies. The *de minimis* exemption does not apply to byproducts (e.g., an EPCRA Section 313 chemical that is separated from a process stream and further processed or disposed). Certain EPCRA Section 313 chemicals may be manufactured as a result of wastewater treatment or other treatment processes. For example, neutralization of acid wastewater can result in the coincidental manufacture of ammonium nitrate (solution), reportable as a member of the nitrate compound category.

Coincidental Manufacture Example: Your company, a nitric acid manufacturer, uses aqueous ammonia in a waste treatment system to neutralize an acidic wastewater stream containing nitric acid. The reaction of ammonia and nitric acid produces a solution of ammonium nitrate. Ammonium nitrate is reportable under the nitrate compounds category and is manufactured as a byproduct. If the ammonium nitrate is produced in a quantity that exceeds the 25,000-pound manufacturing threshold, the facility must report under the nitrate compounds category.

The aqueous ammonia is considered to be otherwise used and 10% of the total aqueous ammonia would be counted towards the 10,000-pound otherwise use threshold. Reports for releases of ammonia must also include 10% of the total aqueous ammonia from the solution of ammonium nitrate (see the qualifier for the ammonia listing).

De Minimis Exemption: The *de minimis* exemption allows facilities to disregard certain minimal concentrations of chemicals in mixtures or other trade name products they process or otherwise use when making threshold determinations and release and other waste management calculations. The *de minimis* exemption does not apply to the manufacture of an EPCRA Section 313 chemical except if that EPCRA Section 313 chemical is manufactured as an impurity and remains in the product distributed in commerce, or if the EPCRA Section 313 chemical is imported below the appropriate *de minimis* level. The *de minimis* exemption does not apply to a byproduct manufactured coincidentally as a result of manufacturing, processing, otherwise use, or any waste management activities. When determining whether the *de minimis* exemption applies to an EPCRA Section 313 chemical, the owner/operator should consider only the concentration of the EPCRA Section 313 chemical in mixtures and other trade name products in process streams in which the EPCRA Section 313 chemical is undergoing a reportable activity. If the EPCRA Section 313 chemical in a process stream is manufactured as an impurity, imported, processed, or otherwise used and is below the appropriate *de minimis* concentration level, then the quantity of the EPCRA Section 313 chemical in that process stream does not have to be applied to threshold determinations nor included in release or other waste management determinations. If an EPCRA Section

313 chemical in a process stream is below the appropriate *de minimis* level, all releases and other waste management activities associated with the EPCRA Section 313 chemical in that stream are exempt from EPCRA Section 313 reporting. It is possible to meet an activity (e.g., processing) threshold for an EPCRA Section 313 chemical on a facility-wide basis, but not be required to calculate releases or other waste management quantities associated with a particular process because that process involves only mixtures or other trade name products containing the EPCRA Section 313 chemical below the *de minimis* level.

Once an EPCRA Section 313 chemical concentration is at or above the appropriate *de minimis* level in the process stream, threshold determinations and release and other waste management calculations must be made, even if the chemical later falls below the *de minimis* level in the same process stream. Thus, all releases and other quantities managed as waste that occur after the *de minimis* level has been met or exceeded are subject to reporting. If an EPCRA Section 313 chemical in a mixture or other trade name product at or above *de minimis* is brought on-site, the *de minimis* exemption never applies. *De minimis* levels for EPCRA Section 313 chemicals and chemical categories are set at concentration levels of either at 1% or 0.1%. The 0.1% *de minimis* levels are dictated by determinations made by the National Toxicology Program (NTP), Annual Report on Carcinogens, the International Agency for Research and Cancer (IARC) Monographs, or 29 CFR part 1910, subpart Z. Therefore, once a chemical's status under NTP, IARC, or 29 CFR part 1910, subpart Z indicates that the chemical is a carcinogen or potential carcinogen, the reporting facility may disregard levels of the chemical below the 0.1% *de minimis* concentration provided that the other criteria for the *de minimis* exemption are met. *De minimis* levels for chemical categories apply to the total concentration of all chemicals in the category within a mixture, not the concentration of each individual category member within the mixture.